

laws and old procedures obstruct the way to justice in an evolving and developing society: a society that gives to the individual his rightful place of dignity as a freeman equal to all his fellow men and where he shall have the right to live under a rule of law based on a sense of obligation. In that society respect for law must be the cohesive force holding it together and not mere obedience based on a surrender to the weapons of state power. That as I see it is the goal you seek in your quest for justice.

## THE QUEST FOR JUSTICE

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It is a great pleasure for me to participate in this symposium on "The Quest for Justice". As your chairman has indicated, I severed my direct association with legal education and with the legal profession some three years ago, to assume a position in general university administration. And, if there is one recurring element of nostalgia for the life that was, it is nostalgia for the association with lawyers, with legal educators, with law students. Accordingly, I welcome this chance to speak concerning, and to listen to a discussion of, a subject which occupied my time for so long a period.

The title of the symposium—The Quest for Justice—is an intriguing one. Somehow, in four words, those who chose the title have captured the essence of some fundamental notions of which lawyers and laymen need to be continually reminded. We are reminded, for example, of the fact that "justice," as a concept, is a goal which society must perennially seek. It is both a societal and a personal goal. The term invokes an image of behavioral patterns which run the gamut from close interpersonal relations (justice in the family) to the broadest relationships between the individual and society as a whole (justice in the courts). These daily relationships are simply a part of life, and the search for making them both tolerable and acceptable is a part of the quest for justice.

We are also reminded by the title that justice is never fully attained. It is always a goal which retreats in front of those who pursue it. We attain justice in a given area only to find that the view of justice from our new vantage point (the definition of justice if you will) has enlarged so that the quest is now even broader than

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when we started and perhaps even more urgently required. I do not mean to imply that justice is a will-of-the-wisp which often fades from view and has no substance. Quite the contrary. It is a goal which is very real, and which always has some rather clearly visible elements toward which specific steps can be taken. Rather, I suggest only that behind, or beside, the clearly visible elements there are ill-defined elements which come into focus only when we have successfully mastered those which were already clearly visible. Illustrations are not hard to find. At one time in the history of the United States, it became clear that society, in its efforts to control some portions of our economy, needed a system of fact-finding and adjudication quite different from that which was provided by our court system. Justice, as then perceived, was not being achieved. The resulting efforts produced a system of administrative tribunals, operating to bring justice to the people and the institutions involved. It succeeded. But as soon as these elements of justice had been achieved, there appeared on the horizon the necessity for new mechanisms to guard against administrative arbitrariness, and the concept of justice was broadened to embrace new goals, new behavior patterns, new relationships.

I have probably belabored the point excessively. I am saying no more than this: that the concept of justice has always been incapable of precise and enduring definition; that its content changes as society changes, and as human objectives change; that we must be prepared, therefore, to seek justice constantly, with full recognition that the search can never be totally ended.

Let me turn, then, from these observations about the title of the symposium to some matters of more specific content. If it be true that there is a constant quest for justice, it may be appropriate to ask: what is the present focus of the search? Where are the presently discernible elements which are demanding attention, and what, perhaps, are the ill-defined elements which lurk in the background?

Had I been asked to speak on such a subject ten years ago, or perhaps even five years ago, I am quite certain that my mind would have turned to a fairly traditional legal framework of analysis, familiar to all lawyers. I would have let my mind dwell, probably exclusively, upon subjects of substantive law and procedural law. I would have asked what reforms in our laws are required to meet current standards of justice. Should we, perhaps, have new rules by which we judge the conduct of a doctor who has engaged in heart transplants? What does "justice" require now by way of rules of conduct concerning abortions? What does justice require in controlling the operation of the stock market? What modifications of a jury system, which has served us well for centuries, are

now required for the attainment of justice? What reform in court procedure can be suggested to speed the processes of adjudication lest delay of justice turn out in fact to be a denial of justice? What impediments to justice, if any, are imposed by the members of the legal profession itself as it controls entry to and performance within that profession? Is it possible to change the whole concept and operation of our liability insurance in automobile accident cases to a system which eliminates "fault" from having any place in the system and merely reimburses proven economic loss as is generally the case with fire insurance? Would this be justice? Are the laws and procedures governing management-labor relations properly designed to encourage and sustain economic justice?

A long catalog of such questions could be propounded, and they are the regular grist for the lawyers, the legal educators, the judges and the legislators who seek to refine and improve the legal system through which we traditionally administer our legal justice. They are ever present. They are some of the reasons why one may assert that the quest for justice never ends and is never totally successful. And, quite frankly, I would like to discuss such questions, for it is terribly important that they be asked and that answers be sought. Law schools, and the legal profession, would be delinquent in the performance of their function if they did not give unremitting attention to the myriad of such questions which we face. Tonight, I note, the whole subject of law reform is part of the agenda for this occasion, and it will be on many agendas in the future.

But, despite my own desires and despite the benefit which might flow from a consideration of questions of that kind, I would like to turn attention to another viewpoint, for it seems clear that the concept of justice is being broadened in ways which transcend the type of problems just mentioned. I cannot help thinking of a story about a golf professional. He was standing at his place of business when two ladies approached him. "Good morning," he addressed one of them, "Would you like to learn to play golf?" "No," she replied. "My friend wants to learn. I learned yesterday."

It is possible that the skills required for the game of golf are sufficiently enduring that that which was learned yesterday will suffice for today and tomorrow. But there are not many areas of knowledge where such a condition obtains. The explosion of knowledge, the spectacular rate of its growth, the massive and rapid social changes which are taking place are rendering obsolete much of our learning and many of our skills. Equally important is the fact that the changes are affecting and modifying the values and the goals of the society in the United States, and perhaps elsewhere. And it is here, I think, that many people in my country, at least, are broadening the concept of justice beyond those matters related

to judicial and quasi-judicial activities. The term "justice" is being used with all sorts of adjective modifiers—"social justice," "economic justice," "personal justice," to name some. And when these adjectives are added, it is clear that the implication is to broaden the applicability of the term "justice" to matters which only indirectly touch the operations of courts.

I suppose there is no reason to be surprised at this development. No dictionary provides a single definition of "justice" for the term does not lend itself to confinement. One finds a definition: "Administration of law, according to the rules of law or equity." This is the ordinary meaning—the traditional concept—the focus usually adopted by lawyers. But one will also find a definition which reads something like this: "The principle of rectitude and just dealing of men with each other—one of the cardinal virtues." It seems to me that the focus of large segments of our population in the United States is upon the latter definition, and the shift of focus explains in part some of the unrest we observe, some of the turmoil which exists in our political, social, and legislative institutions. Problems of every kind and description are being weighed and analyzed in terms of justice—the principle of just dealing of men with each other. The quest is broadened and the dimensions of the objectives are greatly enlarged. It means that the whole range of problems which we sometimes lump under the heading of "core city problems"—the whole range of racial relations problems—the whole range of problems arising in our international relations—are all problems whose solutions are part of our quest for justice.

There are at least two important consequences which flow from this development. One is the degree of unrest which we in the United States are experiencing—particularly among the youth of the country. The second is the necessity for some modification of our processes of legal education. Let me touch upon each of these.

A few weeks ago, Judge Charles Wyzanski, Jr., published an article in the *Saturday Review* entitled, "A Federal Judge Digs the Young". It is a fascinating article, for it encompasses much of the subject matter which permeates the so-called student revolt. Quite properly, he notes that "Certain aspects of the student revolt are much overrated by the commercial press and money-seeking exploiters: sex, drugs, and dress." But he goes on with these comments:

So we are critical of the young. Have they not far more reason to be critical of us? And what have we done to get them on the right path from the beginning? Most of us were quite content to have them undergo a permissive kind of education in which not only the *quadrivium* and the *trivium*, but the whole core of humanistic learning was not part of their deep education. We allowed them pretty much, in their early primary and secondary stages, to have the kind of education from their schools and their peers which they wanted

because we were not sufficiently convinced of our own beliefs. And they knew it. We brought them up in a society in which we no longer believed in either the carrot or the stick. Nor did they.

He goes on later:

What is to be said about these young people plus and minus? And those of us who sit where we hear both sides or many sides of the question know that truth is never (or almost never) all on one side. Let us give the young, first of all, credit for being right about their concern. They, at least, know that there can never be, in a growing society, a philosophy of consensus. They realize, to return to Heraclitus, that "strife is the source of all things". Growth implies discord as well as advance. What the young care about is a deeper kind of democracy than most of us have been willing to accept.

The youth of the United States have deep concerns about many things but primarily they are concerned about the Vietnam War, about poverty, about race relations. And surely they have chosen most critical arenas for their concern. How often, in recent months, have we heard words such as these: "The Vietnam War is an unjust war." "There is no justice when, in a society of unparalleled affluence, thirty per cent of the families have incomes below the declared poverty level." Or, "The Negro has been too long denied justice in attaining his place in our society."

Note, if you will, that the comments are all phrased in terms of "justice". Those who utter them call, often in strident terms, for a quest for justice of monumental proportions. They call for more action in international relations until the force of war is indeed no longer an acceptable method for the settlement of disputes. To achieve just dealing of men with each other is a goal not confined to the elimination of force in settling claims for damage to person or property but one which extends to the relations between masses of people known as nations. Is it unwise to heed this call? Is it wrong to assume that such a question is indeed a question of "justice?" Have not lawyers, from time immemorial, claimed special competence in devising methods for the resolution of disputes? Is not a primary objective of any legal system the substituting of peaceful for forceful methods in such resolution? And would not success in this arena release resources of large dimension which might be devoted to the cause of promoting humanistic values? Yes, there is unrest—unrest which springs from a quest for justice in international dealings.

And what may be said of poverty? The depressing effects of long-continued deprivation of basic human needs are well documented. The vicious cycle of want, crime, ignorance, disease, strife and return to want has been observed, discussed, analyzed and reported, but the cycle has not been broken. Welfare systems have been tried,



with ambiguous results and often with something less than whole-hearted effort. Is it wrong to believe that we can devise a system which can both preserve the values of incentive reward and guarantee a modicum of distributive justice? Is there not a way to harness public and private resources to this end, that human life may be enjoyed, and human spirit lifted as it can be? I have seen no prediction of life in the twenty-first century which does not promise such capability. There remains the question of finding the common will to exploit that capability, and if unrest gives promise of generating such a common will, may we not count it a blessing, so long as the methods do not destroy the fabric of society.

And when one turns to the problems of race relations, there is an overpowering sense of unrest in the United States. It is marked on occasion by violence. Politics today turns daily to the multiple questions which are unanswered. We debate the merits of separatism and integration, and seek the values of each. We spawn demagogues, both black and white, who contribute naught but noise. No city is untouched. No university exists which is not re-examining its role.

This is an arena where, perhaps, we too often take refuge in a false concept of "equal treatment". Judge Wyzanski, in the article referred to, spoke of Mr. Justice Maule, a British Judge, who had before him a divorce case. At that time in England, one was free to get a divorce if he took a very expensive route through the courts. The petitioner was poor, and had remarried without benefit of divorce. Justice Maule said: "It is the glory of England that the law courts are open alike to the rich and the poor." Judge Wyzanski comments: "The glory of the law which treats alike the rich and the poor is no glory." I have heard it expressed in different language by one in a metropolitan city who was called upon to defend the expenditure of a disproportionately high sum *per pupil* in a ghetto elementary school. He put it this way: "Nothing is more unequal than equal treatment of unequals." And if our society through economic and cultural mismanagement brings unequals to the doors of public schools, then equality requires differential activity.

Again, the quest for justice—just dealing of men with each other—has brought unrest. Perhaps those of you who sit outside our boundaries can see more clearly than we the route to justice. If so, I hope we can listen to advice, for the quest will not be ended overnight.

And now I hope it is appropriate to turn finally to legal education. The dedication here of new facilities is, I am sure, only a physical manifestation of an intellectual dedication to improved legal training. I cannot, of course, speak for the needs in your country. But the demands in my adjoining country are fairly clear. Universities as a whole cannot solve society's problems. One must

agree, I think, with Professor John Dawson, of the Harvard Law School, who has recently pointed out that "there could be no greater disaster than for universities to become the instruments for direct political and social action, committed to specific programs that they themselves promote. If they *could* be captured for this purpose, as a few dissenters now propose, they would quickly forfeit the independence and the freedom of inquiry on which their mission completely depends. Some memories are short," he observes. "German universities in 1933 were occupied by storm troops, wearing brown shirts, not blue jeans. The German universities became instruments of political and social action and served their masters well."

No, universities are not instruments for direct action. But within the university, there can be a dedication to keeping up the flow of ideas, and to grappling with ideas responsive to the needs of the society in which they live. And within the university, there is no more natural place for this function than in faculties of law. This is the time-honored mission of the legal educator—to develop and test a host of alternatives to force. To bring the weight of reason to the solution of problems, however large, is commonplace to the law teacher.

The new dimension, however, (and of course it is not totally new) is that which springs from the broadened concept of justice. For today, the lawyer cannot confine his attention to knowledge of the legal system itself. He must, as never before, understand the political, social, economic and even the psychological world within which his legal system operates. The knowledge of sociologists is no longer largely irrelevant to his task. On the contrary, the several disciplines of science, social science and the arts are filled with relevant data, with meaningful ideas, with knowledge of why men and women act as they do. And if law is to devise a structure which will produce justice—which will help men deal justly one with another, then law must build upon that knowledge. The isolation of the law school, which in my country has regrettably been factual in the past, is no longer tolerable. Great strides have already been made, and it is now commonplace for the law faculty to contain (on a full or part time basis) representatives of other disciplines. But communication is still difficult, and sometimes non-existent. The effort must continue.

I suspect that the moving of the faculty of law from Saint John to Fredericton may have been motivated, in part at least, by the felt necessity of maintaining continuous and ever-deepening communication with the full intellectual scope of the University of New Brunswick. Surely such communication will be greatly facilitated by the physical nearness.

There is also a new dimension of legal training developing in the United States which is an outgrowth of attention being given to the legal problems of the poor. There are neighborhood legal clinics being established in many areas of the United States, and they are being manned by young lawyers, youthful graduates, who are prepared to develop their skills in this practice. It is fair to say that the traditional legal education which many American law schools have supplied is not terribly good training for such practice. There is a level of legal problem, a kind of legal problem which in the past has often been ignored because of the poverty of the claimant, which is now being pursued with considerable vigor. Traditional law of landlord-tenant, or of debtor-creditor is being re-examined with a kind of intensity that has not been known for some time. And lawyers are being asked to treat these problems with the same attention that one gives to areas which in the past have been deemed more significant. There is a need to find ways to achieve legal representation for the poor, and it may require a form of group practice somewhat unfamiliar to our profession. And, it must be done in a way which will preserve the sanctity and the personal nature of the lawyer-client relationship. Law schools are surely destined to provide the required training and the leadership in developing the modes of practice which will be needed.

Let me conclude, then, as I started. The "Quest for Justice" is a never-ending search, and there is a continuous call for lawyers, for legal educators, and law students to join the search. The new facilities for a faculty of law here at the University of New Brunswick will surely bring together those who will play their part in carrying on that quest.

### THE QUEST FOR JUSTICE: THE ROLE OF THE PROFESSION

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Our corporate responsibility for justice is a reflection of the scope and relative importance of our role in society. It is not a narrow responsibility, confined to a particular area, such as the adversary process. It is the general responsibility of citizens having critical influence as advisers and decision-makers throughout the legal order. Undoubtedly, we have a special responsibility for the quality of what may be called judicial justice—that is, the justice dispensed in our adjudicative processes. The philosophical basis of

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